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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ EX.F.A. 38/2018

RAJIV THAMPI

..... Appellant

Through: Mr. S.C. Singhal, Adv.

versus

ADITI GUPTA & ORS

..... Respondents

Through: Mr. Anil Sharma, Mr. Jaskaran Singh
and Mr. Aman Bhardwaj, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **07.09.2018**

Caveat No.812/2018.

1. The counsel for the caveator appears.
2. The caveat stands discharged.

CM No.36338/2018 (for exemption).

3. Allowed, subject to just exceptions.
4. The application stands disposed of.

EX.F.A. 38/2018 & CM No.36339/2018 (for stay).

5. This Execution First Appeal under Order XXI Rule 58 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 16th August, 2018 in Execution No.274/2018 of the Court of the Additional District Judge-02 (East)] allowing the application of the respondents/plaintiffs/decreed holders under Sections 151,152 & 153 of the CPC and as a consequence of the said order, dismissing the objections to the execution of the decree preferred by the appellant/defendant/judgment debtor.
6. As aforesaid, the impugned order is a composite order allowing the application under Sections 151, 152 & 153 of the CPC as well as of

dismissal of objections to execution.

7. I have enquired from the counsel for the appellant/defendant/judgment debtor, as to how an Execution First Appeal lies against an order allowing an application under Sections 151, 152 & 153 of the CPC. Such an application is essentially an application in a suit and after allowing the same, the decree has been amended. Though as per Roster I am entitled to hear Execution First Appeals but not a challenge to an order allowing an application under Sections 151, 152 & 153 of the CPC unless permitted in Execution First Appeal. The order of dismissal of objections to the execution is merely consequential to the order allowing the said application. I have thus asked the counsel for the appellant/defendant/judgment debtor as to what remedy is provided in the CPC against an order on such an application.

8. The counsel for the appellant/defendant/judgment debtor states that he has not checked up.

9. Order XLIII Rule 1 of the CPC providing for appeals against orders does not include an order on such an application. It thus appears that the challenge to order on such an application will have to be by a petition under Article 227 of the Constitution of India and hearing of which is not in the Roster of this Court.

10. The counsel for the appellant/defendant/judgment debtor states that this appeal be held over till he files a petition under Article 227 of the Constitution of India.

11. It is felt that several changes would be required in the memorandum of appeal if the appellant/defendant/judgment debtor were to prefer two separate remedies as aforesaid and it is deemed appropriate that the

appellant/defendant/judgment debtor withdraws this appeal with liberty to file afresh.

11. The counsel for the appellant/defendant/judgment debtor withdraws the appeal with liberty to file separate proceedings as aforesaid including an appeal/other proceeding against the order insofar as of dismissal of objections preferred by the appellant/defendant/judgment debtor to the execution.

12. The counsel for the appellant/defendant/judgment debtor, if again prefers Execution First Appeal against the order of dismissal of objections, to also satisfy this Court as to how against the impugned order, such an appeal lies.

13. Though the counsel for the appellant/defendant/judgment debtor has drawn attention to sub Rule 4 of Rule 58 of Order XXI of CPC but it has been enquired from the counsel for the appellant/defendant/judgment debtor, whether not sub Rule 1 of Rule 58 limits the objections therein only to attachment of a property in execution of a decree on the ground of the property being not liable to such attachment. No property stands attached in the execution from which this appeal arises and the decree which is under execution is for recovery of possession of immovable property.

14. The counsel for the appellant/defendant/judgment debtor states that if he prefers an appeal, will address on the said aspect as well.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 07, 2018

‘pp’..